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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

ISIDRO RAMOS GALI,

Defendant and Appellant.

C086355

(Super. Ct. No. 16F8103)

Defendant Isidro Ramos Gali contends the trial court erred in denying his motion to recalculate his presentence custody credits without having him present at the hearing. We will affirm.

I. BACKGROUND

In Shasta County case No. 16F8103 (the Shasta County case), defendant pleaded no contest in January 2017 to unlawful possession of ammunition (Pen. Code, § 30305,

subd. (a)(1))¹ and admitted one prison prior enhancement (§ 667.5, subd. (b)). Per the parties' agreement, the trial court sentenced defendant that same day to four years in state prison. The trial court also resentenced defendant to a three-year concurrent term in San Joaquin County case No. 5106-12845 (the San Joaquin County case).

A subsequently filed memorandum from the probation department noted defendant had two days of actual custody in the Shasta County case, but was not entitled to credit because he was a sentenced prisoner in the San Joaquin County case. The following week, the trial court awarded defendant two days of custody credit.

In April 2017, the trial court calendared the Shasta County case for sentence correction. In May 2017, the trial court imposed a four-year state prison sentence, with two days credit, to run concurrent with the San Joaquin County case.

In October 2017, the trial court calendared the matter for reconsideration of custody credits and requested a memorandum from the probation department. The November 2017 memorandum from the probation department noted defendant was entitled to 405 days of custody credit in the Shasta County case (203 days of actual custody and 202 days of conduct credit), and 424 days of custody credit in the San Joaquin case.

The next hearing was held in December 2017. Defense counsel waived defendant's presence at the hearing. The trial court noted defendant had filed a habeas corpus petition and a motion to correct the presentence custody credits.² Defense counsel noted the custody credits were correctly modified to two days during the May 2017 hearing. The trial court expressed concern that the San Joaquin County case was a split sentence, but all present agreed this would not affect the sentence in the Shasta County

¹ Undesignated statutory references are to the Penal Code.

² The record does not contain a copy of any habeas corpus petition or motion to correct the presentence custody credits.

case, since the court had previously indicated the Shasta County case sentence took “precedence.” The trial court noted it had received a “minion letter.” Having determined the sentence was correct, the trial court concluded the hearing.

Defendant filed a timely appeal from the December 2017 order. In his request for a certificate of probable cause, he stated that he submitted a motion to correct the presentence custody credits in September 2017. He filed the motion in pro per because he had “numerous issues” with his attorney.

II. DISCUSSION

Defendant contends the trial court violated his constitutional and statutory rights to be present at all proceedings regarding his sentence, including custody credits.

As an initial matter, we reject the People’s contention that defendant may not appeal from the trial court’s December 2017 order because it was only in response to a “minion letter,” which the People argue referred to correspondence from the Department of Correction and Rehabilitation regarding defendant’s sentence, even though there is no such correspondence in the record. Since the trial court noted during the hearing that defendant had filed a motion to correct his presentence custody credits, we infer that, in holding that the previously imposed sentence was correct, the trial court was denying defendant’s motion while also addressing any issues raised by the Department of Correction and Rehabilitation or the probation department. A postjudgment order denying modification of a sentence is an appealable order. (*People v. Salazar* (1994) 29 Cal.App.4th 1550, 1557.)

Turning to the merits, we find defendant cannot prevail on his contentions. A defendant has a federal and state constitutional right to be personally present at certain criminal proceedings, as well as pursuant to statute. (*People v. Cole* (2004) 33 Cal.4th 1158, 1230; §§ 977, 1043.) Under the Sixth Amendment, a criminal defendant has a right to be personally present only if his appearance is “ ‘necessary to prevent “interference with [his] opportunity for effective cross-examination.” ’ ” (*Cole*, at

p. 1231.) The Fourteenth Amendment grants a defendant the right to be present only if he “ ‘finds himself at a “stage . . . that is critical to [the] outcome” and “his presence would contribute to the fairness of the procedure.” ’ ” (Cole, at p. 1231.) Article 1, section 15 of the California Constitution grants a criminal defendant the right to be personally present at discussions outside of the jury’s presence on questions of law or other matters only if his presence bears a “ ‘ ‘ ‘ ‘ ‘reasonably substantial relation to the fullness of his opportunity to defend against the charge.’ ” ’ ” (Cole, at p. 1231.) And, finally, under sections 977 and 1043, “a criminal defendant does not have a right to be personally present, even in the absence of a written waiver, where he does not have such a right under article I, section 15 of the California Constitution.” (Cole, at p. 1231.)

Although defendant argues he had a right to be present during the December 2017 hearing based on self-serving statements in his certificate of probable cause request that he had “issues with [his] attorney,” the calculation of defendant’s presentence custody credits was a purely legal matter and not subject to the trial court’s discretion. There is nothing to indicate that defendant’s presence (1) was necessary for an “ ‘opportunity for effective cross-examination,’ ” for purposes of the Sixth Amendment’s confrontation clause, (2) would have “ ‘contribute[d] to the fairness of the procedure’ ” for purposes of the Fourteenth Amendment’s due process clause, or (3) bore a “ ‘ ‘ ‘ ‘ ‘reasonably substantial relation to the fullness of his opportunity to defend against the charge,’ ” ’ ” for purposes of article I, section 15 of the California Constitution or sections 977 and 1043. (*People v. Cole, supra*, 33 Cal.4th at pp. 1231-1232.)

For similar reasons, even if defendant had a right to be present, he was not prejudiced under either the *Chapman* or *Watson* standards. (*Chapman v. California* (1967) 386 U.S. 18, 23-24 [17 L.Ed.2d 705]; *People v. Watson* (1956) 46 Cal.2d 818, 836.) The transcript from the December 2017 hearing indicates the trial court considered and rejected defendant’s motion, with the assistance of another memorandum from

probation regarding credits. Moreover, defendant was represented by counsel throughout the proceeding.

III. DISPOSITION

The order is affirmed.

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

BLEASE, J.